ANIMADVERSIONS Vpon those Notes which the late *Observator* hath publiſhed upon the ſeven *Doctrines* and *Poſitions* which the KING by way of *Recapitulation* (hee ſaith) layes open ſo offenſive.

BIBLIOTHECA BODLEIANA

POSITION I.

That the Parliament has an abſolute indiſputable power of declaring Law: ſo that all the right of the King and People depends upon their pleaſure.

To this the *Obſervator* ſaith,

It has beene anſwered, That this Power muſt reſt in them, or in the King, or in ſome inferiour Court, or els all ſuits will be endleſſe, and it cannot reſt more ſafely then in Parliament.

ANIMADVERSION I.

THe *Obſervator* hath contracted his Maieſties words, but hath kept the ſenſe in more generall termes, and ſeemes (though but faintly) to juſtifie the *Poſition*, by approving (I know not whoſe anſwer) That this Power can reſt no where more ſafely then in Parliament. He meanes the Parliament without the King; If he had allowed the King his place in Parliament, I know no underſtanding man but will eaſily ſubſcribe, That the King in Parliament, or the Parliament with him, have an abſolute undiſputable power, both to make and declare Law; and to end all Suites of what kind ſoever, determinable by humane law within the Kingdome. And here is the moſt ſafe reſting of this Power (and here it hath ever reſted) and not in the King alone (who claimes not that Power, but is willing to governe his Subjects according to the knowne Lawes) and much leſſe in any inferiour Court. But that ſuch an abſolute undiſputable Power of declaring Law, as hath lately bin aſſumed, by the *Major* part of the preſent ſitting Parliament, ſhould be reſting in them, is neither neceſſary for the ending of Suites, nor can be ſafe, either for King or Subject. If they may declare that for a Law, a fundamentall Law, which never yet was Enacted, or had any being; and deny the plain undoubted Lawes that have beene Enacted, or fruſtrate them by ſome unheard of interpretation, (as if ſuch interpretation had been ſome mentall (or rather Parliamentall) reſervation laid up within the Parliament walles, to be produced upon emergent occaſions, by their ſucceſſors) they will have ſo full an

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Arbitrary power, that the right and safety of King and People must wholly depend upon their Votes. Which power can never be safe, either for King or People, nor can they produce one president that may warrant such a Power. But they are not bound or limited by such presidents. Thats the second *Position.*

POSIT. 2. That Parliaments are bound to no Presidents.

OBSERV: *Statutes are not binding to them, why should then Presidents? Yet there is no obligation stronger then the honour and justice of a Parliament.*

ANIMAD. 2. If Statutes be not binding to them, there is no reason that presidents should be. And he saith true, Statutes are not binding to them, that is, *de facto*, they are not (for they in some things goe directly against them) but *de jure*, they are; that is, they ought to be binding to them, till they be repealed by the same power they were made, that is, by Bill orderly passed both Houses, and ratified by his Majesties Royall assent. And unlesse they can shew better reason then their bare Assertion: Presidents (as they are the best warrant, so) they are, and ought to be the limits and bounds of their proceedings. He might have said as truly, That Oathes are not binding to them: and therefore neither Statutes nor Presidents. But the *Observator* tells us (Pag 44.) That the Oathes of Supremacy and Allegiance are not endangered, by making the Kingdom, and not the King, the proper subject of Power. And he yeelds reason for it. *For* (saith he) *hee that ascribes more to the whole Universality, then to the King, yet ascribes to the King a true Supremacy of Power and Honour above all particulars.* I wonder what he meanes by a true Supremacie of Power and Honour above all particulars. Surely, he meanes nothing but priority of place, and height of Title; for he is allowed little power over some particulars, namely, over the Members of either house, and whom else they please to exempt (as they did Serjeant Major *Skippon* for his Power and Commands.) But this distinction helpes them: The Members of either House are sharers in that Supremacie which is in the Vniversality and above his; and by the power of that Supremacie they can exempt whom they please from the power of this, Inferiour (pardon the phrase, absurdities cannot be expresst without a Solecisme) Supremacy. Very good. But, in good sober sadnesse, doth the *Observator* thinke this distinction was thought on by the Framers and enjoyners of that Oath, or that the Members of the House, at their entring the House, did take their Oath to the King, as to the Supreame over all, with exception of themselves, or reservation of an higher Supremacy to themselves, when they should be entred? It is hardly credible; Nor doe all (that desire to tender all due honour to the Parliament) beleeve that they are so the Vniversality, or the Kingdome, as the *Observatour* presumes. They are trusted by the Vniversality and Kingdome, and wee pray, that they may discharge that trust, not knowing, but that a multitude of men subject (every one of them) to errour, may faile in their judgement, and being not exempted from the common condition of

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the ſinfull Sonnes of *Adam*, may poſſibly, not rightly diſchardge the truſt committed to them, as well, as the King, who is blaſted with foule tailings, anderrours, and judgement. Mee thinkes, men that ſo much deteſt Popery, ſhould not borrow the grounds of their reaſoning from them: and I ſhall as ſoone beleeve the Councell of *Trent*, telling us that they are the Vniverſall Church, and therefore cannot poſſibly erre, as that the Parliament is the Vniverſall unerring and unpervertibly juſt body of the Kingdome. And ſurely, the Spirit of declaring muſt needs reſide in a ſtrangely large meaſure in them, who have power, thus to declare not onely Law, but Oathes too; a greater, then which the Popes flatterers never gave him; and hardly ever any Pope aſſumed ſo great: *Quo te conſtringam mutantem protea nodo?* How ſhall theſe men bee bound to doe right, who ſo eaſily unty the knots of theſe ſacred bookes of Law and Oathes? why, yes; There is a bond that will doe it; The obligation of the Iuſtice, and honour of a Parliament. But can any man bee ſure, that they whom neither Law, Cuſtome, and Preſidents of their Anceſtours, nor Oathes can bind, will bee alwayes held in by the obligation of Iuſtice and Honour? Is it not poſſible, that they may (in time) find a power in themſelves of declaring that obligation void, as well, as have done the other? The ſame obligation of Iuſtice and Honour, is as ſtrong upon Kings, (and hath ever beene held more powerfull and obſtrictive in them, then in any ſtate mannaged by a Community; and yet they dare not truſt his Majeſty, though ſo obliged. The *Obſervatour* then muſt pardon mee, if I deſire, they may rather bee held in, (and hold themſelves ſo to bee) by the old obligations of Law, Preſidents, and Oathes, rather then that the Kings liege-people ſhould bee put wholly to confide to that ſingle obligation of the Iuſtice, and Honour of a Parliament.

POSITION 3. **That they are Parliaments, and may judge of publike neceſſity without the King, and diſpoſe of anything.**

OBSERV. *They may not deſert the King, but being deſerted by the King, when the Kingdome is in diſtreſſe, they may judge of that diſtreſſe, and relieve it, and are to bee accompted by vertue of repreſentation as the whole body of the State.*

ANIMADVER. 3. His Majeſty ſets downe this Poſition in more words, but theſe are much to the ſame purpoſe, and upon theſe the inference which His Majeſty makes followes undeniably, That then the life and liberty of the Subject, and all good Lawes made for the ſecurity of them, may bee diſpoſed of, and repealed by the Major part of both Houſes, at any time preſent, and by any wayes and meanes procured ſo to bee: And His Majeſty ſhall have no power to protect them. They ſee nothing, that ſee not the miſery, which may follow upon ſuch a vaſt tranſcendency of arbitrary power, if it were inveſted in the Parliament, which (I dare boldly ſay) was never claimed by any Parliament, though in conjunction with (the head of it) the King. Every (the meaneſt) Subject hath ſuch a right and

propriety in his goods, that without Law, they cannot bee taken from him, though to be employed for the publike good. And though the ſafety of the people, be the higheſt Law, and that doe (many times) give a power above other Lawes, and againſt them, to the ſupreme Magiſtracy in a State, to diſpoſe of private mens eſtates, yet the unchangeable rule of Iuſtice, muſt have place, even in that higheſt Law, and that requires a compenſation to be made to thoſe, whoſe ſtates or goods are ſo diſpoſed of; and never gives power to uphold the publike good with private injury. Nor can it bee imagined, that a State upheld, by ſuch helps, ſhould not be able to make a juſt compenſation to thoſe, by whom it was upheld. But let us heare our *Obſervatour*. They may not (ſaith hee) deſert the King. Gramercy, for that; I am glad to heare they have yet any obligation upon them to tie them to the King. Yet I know not well what he meanes by deſerting the King: if he mean it in that ſenſe, which he doth the Kings deſerting of them, which (out of queſtion) is his not aſſenting to whatſoever they ſhall think fit; Then in reaſon, they ſhould not, by their diſallowing all his Propoſals, have driven him to diſſent from theirs, and ſo to have diſſerted them. Well; But being deſerted by the King, when the Kingdome is in diſtreſſe, they may judge of that diſtreſſe, and relieve it. Al their power then is upon ſuppoſition of the Kings deſerting them. So that if it appeare, that His Majeſty hath not deſerted them (as many good men beleeve he hath not, in the redreſſe of any real grievance,) then they have no ſuch power. And however, they claime this power only when the Kingdome is in diſtreſſe; but how, if the Kingdom be not in diſtreſſe, or (at leaſt) that diſtreſſe be onely or principally, cauſed by their claiming of that power, which cannot conſiſt with the Honour and Royall Eſtate of His Majeſty; which all men (by their late Proteſtation) are bound to defend. If it beſo, we may eaſily diſcerne how far they may ſtretcht this power, which they claim onely in order to diſtreſſe; and that they may make as much uſe of it, as the Pope doth of his power in temporals; *In ordine ad ſpiritualia*. He claimes no more, though (ſome have ſaid, hee hath right to more;) and the Parliament will need no more, to doe as much as hee takes upon him to doe with Chriſtian Princes and States. But they muſt have a right to their power in this caſe, of diſtreſſe; whence have they that? why, they have it as the whole body of the State, and that they are, and muſt be ſo accompted, by vertue of repreſentation very good. But let us conſider his words a little more. There is no underſtanding man, but muſt and will acknowledge (unleſſe he wilfully derogate from them,) that the Parliament repreſents the body of the State, for thoſe ends, for which they convene, as an Ambaſſadour doth the Prince that ſends him, in the mannage of that buſineſſe for which hee is ſent; But this is not an abſolute repreſentation to all intents and purpoſes. Beſides, whom do they repreſent? The Body (ſaith hee) of the State. Bee it ſo: but it is onely the body, without the head. And if they were not by repreſentation onely, but really, the whole body of the People (if it were poſſible, they ſhould,

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convene together) they are all but an assembly of Subjects, of men to be governed, not to rule, to be commanded, not to command their Head and Soveraigne: and then there can be no vertue of representation that can advance them to the power, which the *Observatour* ascribes to them; when such power was never in the whole body, which is represented. No? never such power in the whole body? I know the *Observatours* stomack will rise here. Did not the Peoples consent, at first make Kings and conveigh power into their hands? Truely Sir, not solely; but grant it, what then? Marry, he saith then it is a principle in nature. *Quicquid efficit tale est magis tale*; In English; If the People make a King, they are more King themselves, or if they give power, they have more power: and may resume and exercise that power when they please. Excellent learning, and well applied, I believe hee learned this piece from *Suarez* the Iesuite. But the *Observatour*, may know, that that rule admits many limitations; and surely, it holds onely *in causis totalibus*, which the People are not in the constitution of Kings. But suppose their consent, did at first give power to Kings; when their consent is given for them and their Successours to a King and his Heires, can the succeeding People cut off the entaile, and retract the consent their Ancestours have given? By what right? with what justice? I know not, but the People may contract for them and their Successours in the conveyance of Soveraigne power (if ever they had it in their hands to give) as any man may in the conveyance of his lands or goods: and that such conveyance may be as binding to Successours in the one as in the other: and then I am sure, they cannot have power at all times, and in all succeeding ages, to resume what they have so given. Our Kings right (so farre as it is derived from the People) is of this kind. And if he had no other grounds for his claime of Soveraignty, (as it is most certaine, that he hath) such a consent once granted, were sufficient to bind the People, that it cannot ever bee lawfull for them; by a major part of them (comming in with their *Nolumus hunc regnare super nos*) to deprive him of that right. But surely, they would never make so absolute a grant of their power to Princes as to devest themselves of it. Good Sir, shew mee that proviso in their grant. But it seemes to you unnaturall they should: I doe not wonder it should seeme so to you, who make it agreeable to the *Clearest beames of humane reason, and the strongest inclinations of nature*; (and by consequence, as you would perswade the World, justifiable;) *For every private man to defend himselfe by force if assaulted, though by the force of a Magistrate, or his owne Father, and though hee bee not without all confidence by flight, &c.* I wish whilest you have such recourse to nature, you would not forget Christianity, which teaches subjection and obedience, and gives no liberty; (either to private men, or the major part of the communalty) of resistance, but saith they that resist, *shall receive to themselves damnation*. And if the *Observatour* bee a Gentleman, hee should tender how he hath recourse to nature in point of right, least hee give occasion to some *Wat. Tyler's* Chaplaine, to preach againe upon that text:

Pag. 23.

Pag. 3.

Pag. 16.

Rom. 13.

When Adam *dolve and* Eve *span,*
Who was then a Gentleman.

Hee may find a goodly Sermon upon that Text, set downe by *John Stow* in *Richard* the second, and such Doctrine delivered upon it, the use, of which would shake his title to his inheritance, and the name of Gentleman.

POSITION 4. That no member of the Parliament ought to bee troubled for Treason, &c. without leave.

OBSERV. *This is intended of suspitions onely, and when leave may seasonably bee had, and when competent accusers appeare not in the impeachment.*

ANIMAD. 6. His Majesty hath said so much of this and so little of it hath beene answered, (or indeed is answerable,) that I shall not need to say much. Only I observe the modesty of this *Observatour*; that he doth not absolutely say, they are not to be troubled for those crimes; but not upon suspition onely, &c. I know not what hee may call suspitions, but I beleeve, the best evidences, may easily be held for bare suspitions, if they may not have liberty to speake out; and that they cannot have, unlesse the accuser be first in safe custody, and brought to triall, where they may legally bee produced. And, I beleeve, few wise men will thinke it reasonable, that the grounds of suspition of treason, should necessarily bee opened before triall.

POSITION 5. That the Soveraigne power resides in both Houses of Parliament; The King having no negative voyce.

OBSERV. *This power is not claimed as ordinary, nor to any purpose; but to save the Kingdome from ruine, and in case, where the Kingdome is so seduced, as that hee prefers dangerous men, and persecutes his loyall Subjects.*

ANIMAD 5. His Majesty infers upon this Position, *That himselfe must be subject to their Commands.* This sounds, but harshly in the eares of loyall Subjects; That any posture wherein they can be put, can raise Subjects to a capacity of Soveraignty, and reduce their Soveraigne to become their Subject. But hee comforts us here, and tels us, this power is not claimed as ordinary, nor to any purpose, &c. This is but poore comfort, it is not: but it may be in good time, if they please. He doth not say, they shall not hereafter, or cannot claime it as ordinary, and to other purposes then that he names. So that there may bee other causes, that may make them claime this power, as well as this. But indeed, they need no other, if it bee in their power to declare that to be the case of the King and Kingdom when they please. But they will never do it, but where there is a just cause for it; and the truth leads them to it. Truly, I beleeve honourably of the Justice and Wisedome of Parliaments; but I doe beleeve, that they are not either infallible, or that they cannot possibly doe amisse. And the *Observatour* must bring better arguments; (and I feare, hee cannot bring so good to make mee beleeve otherwise,) then ever yet were brought for the infallibility of a generall Councell. But I have said enough for the present of the residence of Soveraigne power in the Parliament, and the ground of their claime to it, *by the vertue of representation* in my third

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Animadversion. I shall here only give the Reader a briefe glosse upon the language here used by the *Observatour*. To save the Kingdome from ruine, (that is, from Monarchy or being governed by the King. The King is seduced, (that is, hee is perswaded (by his own understanding, and other evill Counsellours,) not to part with his Soveraignty, nor to become a Subiect to his Subiects. Hee prefers dangerous men, (that is, such as would have him still to bee their King, prosecutes his loyall Subiects,) that is, such as would rule him, and the people at their pleasure.

POSITION 6. **That the levying of forces against the personall commands of the King, (though accompanied with his presence) is not levying of warre against the King: but warre against his authority, not Person, is warre against the King.**

OBSERV. *If this were not so The Parliament seeing a seduced King, ruining himselfe, and the Kingdome, could not save both, but stand and looke on.*

ANIMAD. 6. I Thought this Position so strangely Paradoxall, and so apparently contrary to reason, and common sense, that no man would have appeared in the defence of it. Yet this *Observator* never blushes, not blinks at it, but affirmes it stoutly. But for all that, I shall beleeve very slowly, That the Kings Person can at any time be without the King, or without his Authority: Or that they may destroy the Kings Person, to preserve the King. My Faith is not strong enough to beleeve these sublime points, and mysteries of State: I shall subscribe thus farre, That warre against the Kings Authority, (though in the absence of his Person) is warre against the King: But that the King and his Person should be in two places, will never (I feare) downe with me. But however Ile see his reason: What's that? *Why else the Parliament seeing a seduced King ruining himselfe and his Kingdome could not save both, but must stand and looke on.* Surely this reason is full of waight, and ready to burst, it is so big with probability. I suppose the *Reader* understands his language heere, by my former glosse; But if we should take the words as they sound, the reason would seem as strange, as that which it is brought to confirme. The King ruining himselfe and his Kingdome, a mad King, or an Ideot (hee meanes) and then 'twere fit the Parliament appointed him a guardian. *Ruining himselfe and his Kingdome.* Is it possible; That the King should ruine himself and his Kingdom. What? The King alone? Is he alone able to doe it without the People? It is hardly credible? If he have the people on his side, and a prevailing Major party, I thinke the *Observator* (standing to his owne Principles) will not deny that he hath Soveraigne power with him, and that it is unnaturall to thinke the Community should destroy itselfe: But the Community (he will say) is to be lookt at in Parliament. Well, But good Sir, may not the people without the power of representation, which they granted to the Parliament; was their grant so absolute, and so irrevocable, that they dispossest themselves wholly of taking or exercising that power, their owne proper persons? Remember your prin-

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cigles about the conveying of Soveraigne power into the hands of Kings, and if you can shew no better Cards for their power of representation, then the Peoples revocable consent, (and I would faine know why it should be more revocable from Kings then men) you will finde their tenure in it very tickle.

POSIT. 7. That according to some Parliaments they may depose Kings.

OBSERV. *Tis denied that any King was deposed by a free Parliament fairely elected.*

ANIMAD. 7. I like this note better then all the rest, and am wholly of his minde, That never any free Parliament, fairely elected, deposed any King: and I hope (whatsoever his principles seemes to insinuate) they doe not beleeve they have power to do it, and pray that they may never attempt, (at least, not be able) to depose the King, or destroy Monarchy.

The Authors Protestation.

HAving finished these sudden *Animadversions*: I doe protest in the presence of Almighty God, with my life, power, and estate, to maintaine and defend, so farre as lawfully I may, The true Reformed Protestant Religion, His Majesties Person, Honour, and Royall Estate, The just Liberties of the Subject, and the Power and Priviledges of Parliament (so far as I shall be able to know or understand them) and to doe all other things contained in the late *Protestation*. And this I doe sincerely, and from my heart, beleeving my selfe to be under the guilt of Perjury, if I faile in any one thing here protested. And therefore shall never hold my selfe absolved, by observing one, if I violate it in any other part. I shall ever defend His Majesties Person, Honour, and Royall Estate, as my sole Soveraign, and the Parliament (next under him) in the highest capacity of Subjects as the Supreame Iudicatory, the great Councell and Body Representative of this Kingdome, And I pray, that all those that doe not joyne with me, may either speedily be converted or confounded.

Faxit Deus.

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